

POLICY ISSUES SUMMARY

31 CFR 208 FINAL RULE ON MANDATORY EFT PROVISIONS OF THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

I. BACKGROUND

On April 26, 1996, President Clinton signed into law the Debt Collection Improvement Act of 1996, which mandates that all payments from Federal agencies and corporations with the exception of tax refunds, be made electronically by 1999. Because of its role as the Government's primary payment agent, the Department of Treasury's Financial Management Service (FMS) was delegated with the responsibility of implementing this monumental requirement.

On July 26, 1996 FMS published interim rule, 31 CFR Part 208, detailing the provisions of the Debt Collection Improvement Act (DCIA), and requesting comments from interested parties on how the legislation would impact their operations. Pursuant to this request, FMS received valuable comments from trade associations, consumer groups, financial institutions and Government agencies.

One of FMS's first steps was to schedule a series of regional round table meetings with agency representatives. These meetings accomplished two important goals. First, they enabled FMS to educate agencies on the various provisions of the Debt Collection Improvement Act (DCIA). In addition, they provided agencies with a forum for voicing their concerns on the impacts of the mandatory Electronic Funds Transfer (EFT) component of the legislation on their operations.

In August of 1996, FMS formed the EFT Interagency Policy Workgroup comprised of approximately 50 representatives from CFO agencies. This group identified the major government-wide issues associated with implementing the mandatory EFT requirement, and made recommendations on how to handle conversion of check payments. In addition, subgroups were formed to discuss each of the major issues in greater detail including vendor payments, international payments, imprest fund payments, and emergency payments.

Aside from providing education and identifying major EFT conversion issues, FMS was also tasked with helping agencies to prepare formal EFT implementation plans. Accordingly, FMS scheduled individual meetings with agency representatives to discuss the requirements of the implementation plans. These meetings were another important source of information, because

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agency officials often discussed the major issues that they were facing in converting their payments to EFT.

The submitted implementation plans provided another opportunity for agencies to highlight major EFT conversion issues. The implementation plan format required agencies to report on any types of payments that would be difficult or impossible to convert to EFT. In addition, agencies were asked to report on any payment types that they felt could not be converted to EFT.

The FMS also contracted with an outside consulting firm to study several important issues related to the mandatory EFT requirement, including: eligibility for authorized payments agent status; permissible EFT payment methods; reasonable cost standards for EFT services; and circumstances under which waivers (i.e. checks) should be permitted. The contractor researched these issues by conducting a number of individual interviews with various groups affected by the legislation and by holding five different focus groups. Based on a report of their preliminary findings, the consulting firm's research supported many of the conclusions that FMS had drawn from their own meetings with agency representatives and other interested parties.

Analysis of issues raised in the forum described above and policy recommendations which followed, formed the basis of General Standards of Administration (General Standards) to be included in the final rule on mandatory EFT. The purpose of this executive summary is to present those standards and summarize the issues that were the basis for their formulation. The General Standards are attached to the Executive Summary as are issues papers written for several of the larger issues.

II. DISCUSSION OF MAJOR ISSUES AS A BASIS FOR GENERAL STANDARDS

The discussion of issues that follow are based on input from Federal program agencies and are grouped into headings which correspond to the standards for waivers (Exceptions to Support Program Objectives and Exceptions Due to Recipient Hardship) in the General Standards paper that follows. Included in each standard category are the issues for which policy outcomes are recommended.

INFRASTRUCTURE

International Payments

International payments present a unique set of challenges to EFT conversion, because many countries' financial infrastructures, economies, and political environments are not well suited for handling electronic payments. The level of sophistication of the receiving country's

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banking system infrastructure is the greatest determinant of whether or not payments can be made by EFT. Foreign banking systems can be divided into three categories:

- 1) Those that offer services and security levels similar to those of the U.S. banking system;
- 2) Those that have fewer financial resources and offer fewer services and lower levels of security;
- 3) Those that offer few services and marginal levels of security.

Payments to countries with banking systems that fall under the first category (i.e. Canada, and EEC countries) can be made via EFT. Under the International Direct Deposit (IDD) program, the FMS already issues approximately 1 million EFT benefit payments in 10 foreign countries falling into this category. As a result, efforts will be made to convert all types of payments made to recipients in these countries to EFT. Vendor payments will be the most difficult type of payment to convert, since they are generally non-recurring.

FMS has determined that it may also be possible to expand the use of EFT in countries that fall under the second category, however a case-by-case risk assessment would be necessary to determine whether the benefits of converting a payment to EFT outweigh the inherent risks.

In the case of countries falling into the third category, FMS has determined that at the present time, conversion to EFT would seriously compromise the payment recipient's ability to receive a complete and timely payment. Therefore, a waiver will be granted for Government payments made to these countries.

For further information on converting international payments to EFT, see attached "International Payments" issue paper.

Disaster Assistance/Emergency Payments

The unique characteristics of disaster/emergency situations present a number of challenges to EFT conversion. For the purposes of this regulation, emergencies are defined as hurricanes, tornadoes, floods, earthquakes, and other catastrophes which require Federal emergency assistance to supplement State and local efforts to save lives and property, and ensure public health and safety. A disaster or emergency can be declared by the President of the United States or by an authorized Agency Administrator.

As in the case of international payments, infrastructure concerns play a big role in determining the feasibility of EFT payments during disaster/emergency situations. In regions affected by natural disasters delivery mechanisms may be damaged or impaired in the initial

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response phase. For example, financial institutions may be closed or inaccessible due to electrical failure or structural collapse. Automated Teller Machines (ATMs) may not be available because of a lack of telecommunication services due to electrical failure or interrupted phone service. In addition, some emergency and natural disaster situations call for relief efforts in remote regions where EFT delivery mechanisms are few.

In addition, Disaster Assistance Agencies that respond to emergency situations must maintain a certain degree of flexibility to fulfill their missions. Providing assistance to emergency victims and preventing further damage must be done in the most efficient and expedient manner possible. Furthermore, agencies providing emergency relief must have reliable delivery mechanisms to provide assistance to disaster victims.

As a result of these factors, the FMS has determined that Disaster Assistance Agencies should be granted a time based waiver from the mandatory EFT requirement. This waiver should encompass a 120 day period, beginning on the date that an emergency is declared by the President or an authorized Agency Administrator, or the date that the agency begins emergency mobilization and deployment efforts.

For further information on converting disaster/emergency payments to EFT, see the attached "Disaster Assistance Payments" issue paper.

Military\Contingency Payments

By its very nature, the Department of Defense (DOD) engages in certain types of operations that present obstacles to EFT conversion. For example, DOD conducts contingency operations in foreign countries. A contingency operation, as defined in 10 U.S.C. 101 (a) (13), is either:

- a military operation designated by the Secretary of Defense in which armed forces undertake military actions against an enemy; or
- a call to order or retention of the armed forces during a war or national emergency declared by the President or Congress.

Since these operations take place in foreign countries, many of the EFT conversion issues that apply to other types of international payments also apply to payments for military operations. In some countries, the infrastructure (i.e. a developed banking system with levels of security comparable to those in the U.S.) needed to support EFT does not exist. In addition, a variety of cultural, political, and economic circumstances may also prevent EFT from being used.

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In addition, because of DOD's role in protecting national security, they must maintain a high degree of flexibility to fulfill their missions. In many cases, the emergency nature of their operations do not lend themselves to an EFT environment. For example, in the course of military operations, deployed contracting officers are often forced to award contracts to contractors, both within and outside the United States, who are not willing or capable of being paid by EFT.

In addition, because of their importance to national security, many aspects of military operations must be kept classified. In many cases this requirement rules out EFT payments, because the information that would have to be provided to outside parties for processing EFT payments would compromise the security of the operation, and in turn jeopardize national security. In addition, the creation of an EFT mechanism that would not compromise security would be so cumbersome as to be impractical.

For the above reasons, FMS has determined that payments for military/contingency operations should be exempted from the DCIA's mandatory EFT requirement.

SECURITY\FRAUD PREVENTION

Law Enforcement/Classified Payments

Law Enforcement agencies, such as the Bureau of Alcohol, Tobacco and Firearms (ATF), Customs Service (Customs), Internal Revenue Service (IRS), Secret Service (USSS), Immigration and Naturalization Service(INS), Federal Bureau of Investigations (FBI), Drug Enforcement Agency (DEA), and the Bureau of Prisons (BOP) participate in covert operations that could be compromised by the mandatory EFT requirement. All of the law enforcement agencies have undercover agents out in the field who could be jeopardized by the audit trail left behind by an EFT payment. Many of the law enforcement agencies also have participants in witness protection programs who could be endangered if there was a breach of security as a result of the information requirements for an EFT payment. Cash is the preferred method of payment for most covert operations, because it provides maximum flexibility and more importantly, doesn't leave any audit trail.

The nature of law enforcement agencies' operations often do not lend themselves to an EFT environment. For example, the majority of law enforcement payments are on the spot cash transactions where cash is exchanged for valuable information or evidence. Negotiation of payment terms between the agent and the provider of the information of evidence in virtually all cases, would preclude a sale.

In addition, the expediency of funds distribution is often crucial to the success of many law enforcement operations. Law enforcement agents often require immediate access to funds at any given time of the day. EFT, as well as third party drafts, require going to a financial institution or

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an ATM to obtain funds. However, ATMs are not always accessible and picking up a wire transfer or cashing a third party draft can only be done during banking hours.

As a result of the above law enforcement agency concerns, FMS is recommending a waiver for payments related to enforcement covert operations.

Payments to Joint Payees

In disaster situations, payments are sometimes made to joint payees in order to reduce the occurrence of fraud. For example, in some cases, payments to disaster victims for rebuilding their homes must be endorsed by both the homeowner and the contractor hired to repair the home. In this way, the Government is protected from fraud, because the homeowner will not endorse the check and become liable for the payment unless the contractor has completed the work and the contractor will not endorse the check unless the borrower uses it to pay them for the completed work.

Converting these types of payments from check to EFT would eliminate the Government's ability to utilize this fraud prevention measure. As a result, FMS is recommending a waiver for payments made to joint payees in the above circumstances.

Payments to Hostile Parties

Another issue raised by agency representatives is the existence of hostile parties who will most likely resist conversion to EFT. The Bureau of Indian Affairs (BIA) provided an example of payments to Indians living on reservations in response to the White Earth Reservation Land Settlement Act of 1985 (WELSA). BIA anticipates that WELSA payment recipients would be resistant to converting their payments to EFT for the following reasons: (1) WELSA was unpopular and strenuously resisted, and (2) the nature of the historical relationship has resulted in considerable reluctance on the part of Indians to share personal information with the Government.

As a result, FMS recommends a waiver from the mandatory EFT requirement for payments to WELSA recipients and any other payment recipients deemed hostile to the government.

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COST TO GOVERNMENT

An issue raised many times in discussions with agencies is whether or not making an EFT payment is justified when the total cost of making the payment exceeds the benefit of making the payment. While the intent of the legislation is partly to improve service to Federal payment recipients, the legislation was also intended to produce savings to the Government. Accordingly, waiver standards include a provision for waivers from the provisions of DCIA when the cost of making an EFT payment exceeds the benefit of making an EFT payment.

Non-recurring payments

If non-recurring payments are defined as payments made only once, then the cost of making an EFT payment will necessarily be higher than the cost for a check payment. This is due to the one time initial cost of enrolling the recipient which is not spread over multiple payments and will hold true regardless of the amount of the payment. For example, if the cost of enrollment to the agency is \$5.00 and the cost to the agency of making a payment is \$1.00 per transaction, a non-recurring payment will cost \$6.00 $((\$5.00 + \$1.00)/1 \text{ payment})$. However, if ten EFT payments are anticipated, the average cost per transaction is \$2.00 $((\$5.00 + \$5.00)/5)$ and the marginal cost of making the nonrecurring EFT payment is higher than the cost of making a check payment

Recurring Payments

Recurring EFT payments will be cheaper than recurring check payments when the initial one time cost of enrolling a payee is spread over a sufficient amount of payments. However, for ease of implementing this legislation it is not recommended that the final reg recommend that agencies calculate this breakeven point, and recurring payments should therefore not be waived from the provisions of DCIA. A recurring payment for purposes of this legislation is defined as more than one payment per recipient, per enrollment.

Small dollar amounts (Not time sensitive)

Small dollar amount payments *per se* are not candidates for waivers. While it is true that transaction costs as a percentage of the payment amount are disproportionately high for any payment mechanism, including an EFT payment, the determining cost factor is still based on the marginal cost of making the payment via EFT. That is, if a small dollar invoice or refund is non-recurring, then the non-recurring nature of the payment will be the determining factor. If a small dollar amount is recurring in nature, then it may be cheaper to make the payment via EFT after a breakeven number of transactions is reached (see Recurring Payments discussion above). Also, see Time Sensitive payments below for discussion of small dollar amount payments that may be made non-electronically because of the payment's time sensitivity.

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RECIPIENT HARDSHIP

Discussion of and recommendations for granting waivers in recipient hardship cases will be deferred until FMS is in receipt of a final report from the contractor on the study done to determine how the final rule will define Authorized Payment Agents (APAs). To the extent APAs can expand access to those recipients for whom an EFT payment might otherwise impose a hardship, limited waivers for these categories may be warranted. Other factors which will influence the recommendation include the role of EBT in delivering EFT payments to the unbanked and the extent to which authorized payment agents will be able to create a nationwide option by 1999.

FAILURE TO OBTAIN ESSENTIAL GOODS AND SERVICES

Agencies are very concerned that the DCIA not interfere with their efforts to obtain goods or services deemed essential to the agency's mission. Numerous examples were given by agencies of cases in which an EFT payment would be impractical for two main reasons:

Monopoly Providers

In some cases, goods or services are provided to an agency by a company or industry which is the only supplier of that good or service. Utility providers including telephone service are an example. Many utilities are in the position of being the only provider of gas, electricity, etc. These utilities generally do not operate under bilateral contracts with the agency, but provide and bill for services. An attempt to force enrollment of a utility, if taken to an extreme conclusion, could produce a stalemate in which the agency refuses to pay and the utility refuses to provide service. The agency would be placed in the position of having to make a check payment to guarantee continuation of utility service.

Monopoly providers exist in the commercial world. Many companies provide equipment or computer hardware and software that is proprietary and can be maintained only by that company. Therefore, payment term conditions in a contract for maintenance of these systems may to some extent be dictated by the contractor. An agency would have no choice but to abide by those terms, notwithstanding DCIA, in order to guarantee continued operation of critical systems.

Although EFT payments to these suppliers are required, if the supplier resists to the point of threatening to suspension of service or not supply a good, then the agency may opt to make a check payment or other payment. Other payments may include cash under \$100, third party drafts under \$10,000 or a check for amounts over \$10,000. In these cases, where a supplier is

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resistant to current ACH mechanisms like Vendor Express, agencies may also consider offering alternatives such as preauthorized debit to the Treasury (this program is referred to as PrimePay.)

Time sensitivity - small dollar amount

Agencies have historically relied on Imprest Funds for payments whose nature is such that a FMS check or an EFT payment is impractical or infeasible. Certain traditional uses of imprest funds have proven to be good candidates for conversion to EFT and plastic card technology, such as travel advances and travel and expense reimbursement. For this reason, the Financial Management Service has recommended in a report to the National Performance Review that government-wide imprest funds be eliminated. The report focused on travel and expense related imprest fund activity.

Many agencies, however, rely on imprest funds for mission related activities beyond travel and expenses. Law enforcement agencies use imprest funds for paying informants and for undercover activities. Some benefit agencies or federally funded hospitals (NIH) use imprest funds to pay for small dollar amount reimbursement for travel expenses to and from the facilities for patients who are unbanked, indigent, mentally ill or physically handicapped. Federal prisons use imprest funds to reimburse prisoners who are leaving prisons. Disaster Assistance agencies use imprest funds in the aftermath of natural disasters when payments using FMS checks or EFT are impossible. In addition to these mission-related activities, agencies rely on Imprest Funds for small dollar purchases where a FMS check or EFT might be impractical. Examples include purchases at small, rural retailers, emergency repair services, snow removal, gas for lawnmowers, snow removal equipment, or Federally owned or leased vehicles, airport parking fees, COD orders, horse shoeing, car washing, and laundering services for uniforms or other special clothing.

Many of these types of payments are already covered under other standards such as emergency payments, monopoly providers and nonrecurring payments. For these mission related, imprest fund type activities under \$10,000, third party drafts may be used. Beyond mission related activities under \$10,000, and where the critical attribute of payments are time sensitivity, small dollar amount, and a requirement for cash, agencies may maintain a petty cash fund of \$100.

Time sensitivity - large dollar amount (over \$10,000)

Where a time sensitive payment is required for a large dollar amount, the agency may make whatever type of payment is necessary to ensure resumption of an essential service or operation. Examples include equipment repair or replacement, or the purchase or replacement of any system component without which a critical system would be nonoperational and would cause a mission critical objective to be compromised.

III. OTHER MAJOR POLICY ISSUES NOT COVERED IN STANDARDS

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VENDOR REMITTANCE DATA

Of all the Government payment types currently being converted to EFT, vendor payments have had the lowest conversion rate. In the EFT vendor program at FMS, vendor participation has grown from a low of approximately 6% in 1987, when the program started to only 16% today. Vendor payments present a unique set of challenges to EFT conversion, such as large numbers of small/non-recurring payments, problems with passing on remittance information to vendors, vendor enrollment difficulties and vendor resistance.

The problem of passing on remittance information to vendors has been the primary reason why many vendors are reluctant to participate in the EFT program. In the current vendor EFT environment, an EFT payment instruction is sent from the Federal disbursing office to the vendor's financial institution via the Automated Clearing House (ACH) network. The corporate ACH formats used by disbursing agencies for vendor payments are EDI/CTX and CCD+.

When the ACH payment reaches the vendor's bank, the payment is credited to the vendor's bank account. If the format used to deliver the payment includes an addenda record where information about the payment is stored, the bank must translate addenda record data and provide the information to the vendor. This translation capability requires an investment on the part of the bank in software which can translate the data, an investment which many banks, especially small to medium sized banks serving small to medium sized vendors, have not made. It is estimated that of the approximately 11,000 banks which can accept an EFT payment, only 735 of them are capable of translating the remittance data into a human readable form for their customers.

Without remittance data for payments, it is difficult and sometimes impossible for vendors to reconcile their accounts receivable. Payments are credited to the vendor's account without any indication from the bank of what the payment is for.

In addition to the inability of the vendor to get information about a payment, often, when information is provided by a financial institution, there is a cost associated with receiving it. For many small vendors, these charges adversely impact their profits, and make it cost-prohibitive to obtain this information.

In response to the above concerns, FMS recommends a policy of aggressive dialogue and cooperation with the banking industry to jointly pursue low cost solutions for converting vendor payments. In addition, on its own, FMS will focus on research and development of short term and long term government solutions.

For a more detailed discussion on the vendor remittance information problem, see the attached "Vendor Remittance Data" issue paper.

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VENDOR ENROLLMENT

Another problem that has discouraged vendors from voluntarily converting their payments to EFT is the lack of an efficient and cost effective enrollment system for participating in the EFT program. Vendors must currently enroll with each Federal agency with which they do business, making enrollment an expensive and time consuming activity. Additionally, there is no standardized way for vendors to enroll, which has led to redundant efforts on the part of agencies and vendors.

There are currently three ways for vendors to enroll in EFT:

- 1) Some agencies send the SF 3881 Vendor Enrollment Form directly to the vendor for completion. This process is burdensome to agencies due to manual database maintenance, validation and mail/fax procedures. It is also burdensome to vendors who have to repeat this process for all agencies that they do business with.
- 2) Some agencies use a third party, such as the of Agriculture's National Finance Center (NFC) or the of FMS's Philadelphia Financial Center to enroll their vendors. However, these processes are also paper-intensive, lengthy, and burdensome to vendors who may have to repeat the process for all agencies with which they do business.
- 3) Vendors can enroll in the of Defenses' (DOD's) Central Contractor Registry (CCR). The registry is used to inform government agencies that a vendor is willing to receive their payments by EFT. In order to participate in this process, vendors must be EDI capable, use a Value Added Network (VAN), Value Added Bank (VAB), or use the Internet. However, the CCR was originally created for use in the government procurement process, not vendor enrollment. As a result, enhancements would be necessary before the system solved all of the government-wide vendor enrollment problems.

FMS will pursue the following strategies to develop a solution for the vendor enrollment problem:

- 1) FMS will continue to work with DOD, OMB and SBA to identify enhancements to the CCR to make it more accessible for both vendors and agencies, as well as increase vendor enrollment.
- 2) FMS will continue to work with agencies through various interagency workgroups such as FITEC and the CCR Workgroup to develop standards, policies, and procedures for the development of a central registry to provide agencies and vendors with a single source of vendor information for procurement and payment activities.
- 3) FMS will work with agencies to provide guidance concerning the liability of the certifying

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officer for placing banking information contained in the CCR in the payment file.
Certifying Officers are currently liable for all payment information in certified payments.

COLLECTION OF BANKING INFORMATION

Other issues related to the collection of banking information are whether or not Government contracting officers should be allowed to accept banking information from vendors, and whether or not the provision of this information should be a condition of award. The Federal Acquisition Regulation interim rule on mandatory EFT currently prohibits contracting officers from accepting banking information, although it is likely that proposed FAR changes to be reflected in a final rule, will lift that prohibition due to virtually unanimous agreement among government agency finance offices that this prohibition impedes the implementation of the DCIA. Furthermore, a majority of those finance offices support the FAR requiring the contracting officer to collect the data as a condition of award.

Because of the implications of successfully implementing DCIA, FMS recommends that the final rule strongly encourage contracting officers to require banking information from vendors as a condition of award. This language would be consistent with proposed language in the FAR final rule on mandatory EFT.

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EFT₉₉ REGULATORY AND POLICY ANALYSIS

TOPIC: INTERNATIONAL PAYMENTS

ISSUE

Should Treasury grant any type of waiver for international payments because of current limitations on capabilities to make EFT payments internationally?

RECOMMENDATION

- 1) EFT should be mandatory for all payments to countries with a banking system that supports EFT and has levels of security similar to those of the U.S. banking system. It is therefore recommended that no waiver be granted for making EFT payments where electronic payments are routinely being made today or where an adequate banking infrastructure exists. FMS will maintain a list of countries where EFT payments are currently being made and where EFT will be mandatory.
- 2) A waiver should be granted to agencies which make payments to countries with less developed and secure banking systems or countries with political or economic factors that make it unfeasible or impossible for payment to be made via EFT. Payments via EFT would become mandatory when conditions are such that an EFT payment would be delivered to an adequate banking system which is feasible and secure and is included in FMS' list of EFT compatible countries.

JUSTIFICATION

A great deal of effort is being spent in developing ways to expand EFT payments internationally.

- A steering committee consisting of the Federal Reserve Bank of New York, the Financial Management Service (FMS), the State Department and the Social Security Administration (SSA), is working to develop ways for vendor, benefit and other payments to be made electronically. Current and future efforts include discussion of the role of SWIFT (the Society for Worldwide Interbank Financial Telecommunication - a worldwide interbank network that moves messages and funds transfer instructions among member financial institutions) in expanding international EFT payments; cooperative efforts with the State Department; expanding International Direct Deposit (IDD) for non-recurring, non-benefit payments; and other options.

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- SSA, in cooperation with the New York Fed, has been successful in converting approximately one million check payments to EFT under the IDD program.
- Other options currently in use, in development, or under consideration include the use of the Electronic Certification System (ECS) by disbursing officers in foreign countries, the use of correspondent banks, and the use of credit cards or other plastic card technology.

Given the success of IDD for benefit payments and options available or under consideration for vendor and other payments, for those countries where IDD is in place and/or where we know that the banking infrastructure is secure and efficient, no waivers are justified for these payments.

While EFT can be fully utilized in countries with banking systems that offer services and levels of security similar to those in the U.S., in other countries it may be impossible or unfeasible to make EFT payments because of insecure and inefficient banking systems. A provisional waiver for payments to those countries would eliminate the chilling effect that a permanent provision might have on the development of products or systems which may produce a climate conducive for EFT payments in the future.

It should also be noted that there may be countries where EFT is feasible in some regions, but not in others. For example, some countries may have a major city, or several major cities, where adequate banking systems and security exists, but outside of these cities the necessary financial institutions are absent. In cases such as these, it would not be feasible to apply a blanket EFT policy to the entire country. Instead, EFT requirements would have to be decided on a regional basis.

These recommendations are supported by the State Department and other agencies participating in the FMS Interagency Policy Workgroup.

SCOPE OF PAYMENTS

International payments are made by:

1) Six Treasury Regional Disbursing Officers (RDOs) on behalf of U.S. government agencies requiring disbursement of U.S. dollar check payments to foreign countries; or, by the Treasury RDO in Philadelphia, Pennsylvania, for SSA and OPM under the International Direct Deposit Program (IDD). IDD allows for disbursement of foreign currency via electronic funds transfer, to beneficiaries in any of the ten countries where this program is operational.

Under the IDD program, the Treasury Department issues approximately 1 million EFT benefit payments valued at \$380 million annually. Treasury is also working to establish an international debit card service in the following countries: Costa Rica, Panama, Philippines, Mexico, and possibly Canada. This service will be an alternative to IDD.

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2) Three State Department U.S. Disbursing Officers (USDOS), who have delegated disbursing authority from the Department of Treasury, for disbursing their own program payments in U.S. dollars and foreign currency; for disbursing on behalf of U.S. government agencies requiring foreign currency check payments; and for disbursing U.S. dollar payments to foreign countries for U.S. government agencies located overseas.

The State Department disburses approximately 60 percent of all international payments.

3) Agencies with statutory disbursing authority, like the Department of Defense (DOD) or the Department of Justice (DOJ), in foreign currency and U.S. dollars, for their own program payments.

Executive agencies make international disbursements primarily for benefit, vendor and foreign national salary payments.

BACKGROUND

The ability to make an EFT payment to a region outside the U.S. largely depends on several country-specific factors related to infrastructure, politics and the economy. Many international payments will be difficult to convert to EFT, including vendor payments and any payments to countries without an adequate banking infrastructure.

International payments are unique in that the ability to deliver a payment may be adversely affected by infrastructure and political and economic circumstances, which vary greatly from country to country. Political and economic factors, such as civil unrest or hyperinflation, may influence how we are able to conduct financial transactions in other countries. Efforts to convert payments to EFT have been most successful in regions of the world that are technologically similar to the U.S., namely Canada, European Economic Community (EEC) countries, some Asian countries and other fully developed countries. Many regions of the world, however, do not have advanced and secure banking systems or technological infrastructures conducive to EFT.

There are three primary categories of international payments: vendor, benefit, and salary payments to foreign nationals. As a non-recurring payment, vendor payments are the most difficult payment type to convert to EFT, however infrastructure and political and economic factors discussed above are relevant to all payment types.

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Of these factors, the level of sophistication of the receiving country's banking system infrastructure is the greatest determinant of whether or not payment can be made via EFT. Foreign banking systems can be divided into the three categories:

1. Those that offer services and security levels similar to those of the U.S. banking system;
2. Those that have fewer financial resources and offer fewer services and lower levels of security; and
3. Those that offer few services and marginal levels of security.

Payments to countries with banking systems that fall under the first category (i.e., Canada and EEC countries) can be made via EFT. It may be possible to use EFT in countries that fall under the second category, but a risk assessment would have to be performed to determine whether the benefits of converting a payment outweigh the risks inherent to a country's type of banking system. For countries with category three banking systems, conversion to EFT, if not impossible, would seriously compromise the payment recipient's ability to receive a complete and timely payment.

The following alternatives were considered in formulating the final recommendation: 1) Provide a blanket waiver for all international payments; 2) Provide no waivers for international payments; or 3) Provide a provisional waiver for some international payments.

TREASURY IMPLICATIONS

- FMS will work with agencies to help countries achieve EFT capabilities.
- FMS will continue to work with the steering committee consisting of the Federal Reserve Bank of New York, the State Department and the Social Security Administration.
- Should FMS consider playing a greater role in the disbursement of international payments?

AGENCY IMPLICATIONS

- Agencies disbursing international payments should consult with Treasury as to which countries EFT payments will be required in.

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PUBLIC IMPLICATIONS

- Payment recipients would be required to accept the applicable exchange rate.
- The same mandatory EFT rules that apply to domestic payments, also apply to international payments.

BASIS FOR POLICY ANALYSIS

FMS has met with many agencies since enactment of the legislation to gather information and discuss issues used as the basis for the policies recommended in this paper. FMS conducted over a dozen round-tables throughout the country with over 1100 total participants. Focus groups met to discuss significant issues related to certain payments types.

In addition, FMS formed the Interagency EFT Policy Workgroup, the goal of which was to obtain agency input on key issues to be considered in formulating Treasury's final rule on mandatory EFT. As part of this workgroup, a subgroup focusing on international payments was formed, consisting of approximately 8 active participants from various agencies including State Department, USAID, DOD and SSA. The subgroup met several times during the 5 month period during the time in which the Interagency EFT Policy workgroup was convened. The international payments subgroup produced an issue paper on the subject of international payments and mandatory EFT from which this policy paper was significantly drawn.

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EFT₉₉ REGULATORY AND POLICY ANALYSIS

TOPIC: DISASTER ASSISTANCE PAYMENTS

ISSUE

Should Treasury grant a blanket waiver for any emergency payments because of current limitations on capabilities to make EFT in some cases in the event of a natural disaster?

RECOMMENDATION

From the onset of any disaster relief effort, agencies should be encouraged to use EFT whenever possible. However, the Financial Management Service (FMS) recommends that agencies be granted a time based waiver to cover the initial response phase. We have determined that 120 days is a sufficient time period for the response phase and that the average response phase will last no more than 120 days. This 120 day period shall begin on:

- the date an emergency situation is declared by the President or the authorized agency administrator; or
- for agencies that respond to certain types of emergency situations as part of their agency mission, the date on which the agency begins its emergency mobilization and deployment efforts.

JUSTIFICATION

A period of time is needed to give agencies the maximum flexibility to fulfill their missions in the most efficient and expedient manner possible. A period of 120 days is recommended to ensure that the time span is sufficient in covering the initial emergency response efforts of any natural disaster. The administrative burden placed on the agencies during the initial response efforts should be minimized to expedite assistance and relief efforts. The administrative burden placed on the victims should be minimized to prevent further hardship. In addition, emergency situations often become the focal point of the media and therefore it is critical that the Federal Government's response efforts be as seamless as possible.

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Beyond the 120 day period disaster relief agencies or departments are in a better position to make and deliver EFT payments. Infrastructure has usually been restored to operational viability and payments tend to be recurring in nature. Recurring payments are much more easily managed in an EFT environment than are non-recurring payments because the time and costs of making the payments are spread over multiple payments.

The Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA), and other Federal disaster agencies support Treasury's recommendation on disaster assistance payments.

SCOPE OF PAYMENTS

For purposes of this regulation, emergencies are defined as hurricanes, tornadoes, floods, earthquakes and other natural disasters and catastrophes which require Federal emergency assistance to supplement State and local efforts to save lives and property, and ensure public health and safety. A disaster or emergency can be declared by the President of the United States or by an authorized Agency Administrator.

The primary agencies engaged in disaster relief efforts are FEMA, SBA, and the U.S. Department of Agriculture (USDA). Several other agencies such as the Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA) also respond to emergencies. The average number of disaster payment transactions is approximately 454,000 per year. The dollar value of those payments is estimated at an average yearly amount of \$1.3 billion.

BACKGROUND

Disaster Assistance Agencies that respond to emergency situations must, by their nature, maintain a certain degree of flexibility to fulfill their missions. Providing assistance to emergency victims and preventing further damage caused by natural disasters must be done in the most efficient and expedient manner possible. Furthermore, agencies providing emergency relief must have reliable delivery mechanisms to provide assistance to disaster victims.

In regions affected by natural disasters delivery mechanisms may be damaged or impaired in the initial response phase. For instance, financial institutions may be closed or inaccessible due to electrical failure or structural collapse. Automated Teller Machines (ATMs) may not be available because of a lack of telecommunications services due to electrical failure or interrupted phone service. In addition, some emergency and natural disaster situations call for relief efforts in remote regions where EFT delivery mechanisms are few.

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There are two phases to an emergency response effort: 1) the initial response phase; and 2) the subsequent recovery phase. For FEMA and SBA, the initial response phase begins when an emergency is declared by either the President or by an authorized agency administrator. A Disaster Application Center is then established on-site to accommodate disaster victims. If infrastructure exists, an EFT payment may be made through a Direct Deposit transaction. If infrastructure doesn't exist, a check may be issued or cash may be given. Checks given at relief locations are often issued for reconstruction of homes or businesses and are not cashed immediately until renovation or rebuilding is complete. Therefore, in most cases where checks are issued, no infrastructure is immediately required. Efficiency and expediency in the initial response phase are of the utmost importance to ensure that the needs of emergency victims are met and damage caused by natural disasters is minimized.

The following recommendations were considered in formulating Treasury's final recommendation: 1) a blanket waiver for all disaster payments; 2) no waiver for any disaster payments; 3) a shorter time period (for example 60 days for the period granted for agency discretion); and, 4) 120 days for the period granted for agency discretion.

BASIS FOR POLICY ANALYSIS

FMS has met with many agencies since enactment of the legislation to gather information and discuss issues used as the basis for the policies recommended in this paper. FMS conducted over a dozen round-tables throughout the country with over 1100 total participants. Focus groups met to discuss significant issues related to certain payments types.

In addition, FMS formed the Interagency EFT Policy Workgroup, the goal of which was to obtain agency input on key issues to be considered in formulating Treasury's final rule on mandatory EFT. As part of this workgroup, a subgroup focusing on emergency payments was formed, consisting of approximately 8 active participants from various agencies including SBA, FEMA, USDA and HUD. The subgroup met approximately once every 3 weeks for the 5 month period during the time in which the Interagency EFT Policy workgroup was convened. The emergency payments subgroup produced an issue paper on the subject of emergency payments and mandatory EFT from which this policy paper was significantly drawn.

TREASURY IMPLICATIONS

FMS' Regional Financial Centers (RFCs) will continue to provide support during disasters.

AGENCY IMPLICATIONS

If the agency cannot convert these payments to EFT by the end of the 120 days, they must apply for a waiver from the Department of the Treasury.

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PUBLIC IMPLICATIONS

FMS will continue to be sensitive to the needs of disaster victims.

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EFT₉₉ REGULATORY AND POLICY ANALYSIS

TOPIC: VENDOR REMITTANCE DATA

ISSUE

What regulatory or policy provisions, if any, should Treasury consider for payments to vendors who cannot get from their financial institution payment information (remittance data) about Federal payments credited to their account at a reasonable cost.

BACKGROUND/SCOPE OF PAYMENTS

A vendor payment is defined as a payment to any person or business providing goods or services to the Federal Government. These payments range in type from one-time small dollar payments to large dollar contract payments. In FY 1995, the Federal government volume of vendor payments exceeded 40 million transactions valued at approximately \$300 billion. These payments include disbursements from Treasury and non-Treasury disbursed offices. (Please see attached chart for vendor volume and dollars by check and EFT.)

Historically, vendor EFT participation in the Federal government has been low. In the EFT vendor program at Treasury, vendor participation has grown from a low of approximately 6% in 1987, when the program started, to only 16% today.

Vendor payments represent approximately 2% of all Treasury disbursed payment transactions and approximately 20% of the dollars. Although vendor payments represent a very small portion of total Treasury disbursed payments, these payments make up a much larger percentage of payments made by non-benefit agencies. Vendor payments for non-benefit agencies range between 10% and 30% of their total payments. Consequently, vendor payments are among the top payment types to which agencies must devote resources in administering.

Of total vendor payments disbursed by Treasury, approximately 16% of the transactions are made via EFT. These transactions represent 80% of the dollars of all Treasury disbursed vendor payments. These numbers reflect the fact that although a relatively small percentage of vendor payments are made via EFT, the majority of the dollars are being delivered via EFT. However, notwithstanding the fact that 80% percent of all vendor **dollars** are delivered via EFT, the legislation requires that the 80% of the **transactions** currently being made by check be converted to EFT. These transactions represent payments that may be the most difficult to convert: those to

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small and medium sized vendors who do not bank with institutions which are capable of providing remittance data at a reasonable cost.

CURRENT VENDOR EFT ENVIRONMENT

The Automated Clearing House Network (ACH) and the Fedwire systems are the two most widely used EFT payment mechanisms. In addition, Treasury's interim rule on mandatory EFT, 31 CFR Part 208 has expressly allowed the use of credit cards as an acceptable form of EFT. In the current vendor EFT environment, an EFT payment instruction is sent from the Federal disbursing office to the vendors' financial institution via the ACH. The corporate ACH formats used by disbursing agencies for vendor payments are CTX and CCD+. ^{1/}

When the ACH payment reaches the vendor's bank, the payment is credited to the vendor's bank account. If the format used to deliver the payment includes an addenda record where information about the payment is stored, the bank must translate addenda record data and provide the information to the vendor. This translation capability requires an investment on the part of the bank in software which can translate the data, an investment which many banks, especially small to medium sized banks serving small to medium sized vendors, have not made.

ANALYSIS

Without remittance data for payments, it may be difficult and sometimes impossible for some vendors to reconcile their accounts receivable without spending considerable time and resources tracking down payment information. Payments are credited to the vendor's account without any indication from the bank of what the payment is for. If the vendor has no reference to a specific payment request, then the vendor cannot match the payment with an account receivable short of calling an agency directly. This is the primary reason why vendor participation in EFT is and has historically been low.

As a result of the recently passed legislation, many agencies have mailed letters to all their vendors asking for banking information needed to make an EFT payment. Although the initial response from vendors was good, a significant portion of vendors contacted the agencies to say that they were dissatisfied because their banks were not passing on information about the payments.

The remittance data issue is not confined to the Federal government. Receivers of corporate payments have the same problems receiving payment information as do Federal payment recipients. It is estimated that of the approximately 11,000 banks which can accept an EFT payment, only 735 ^{2/} of them are capable of translating the remittance data into a human readable form for their customers.

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In addition to the inability of the vendor to get information about a payment, often, when information is provided by the financial institution, there is a cost associated with receiving it. For larger vendors dealing with larger banks, it is likely that this information is provided at a cost acceptable to the vendor. However, small to medium sized banks often charge set up fees, monthly fees and transaction fees which may have an adverse impact on profits for small to medium sized vendors. (This is also often the case when large banks are servicing relatively small accounts.)

THE BANKING INDUSTRY

Because banks receive both the payment and the accompanying payment information in one electronic transaction, banks are generally thought to be in the best position to provide remittance data directly to vendors thereby affording vendors the least amount of reconciliation effort. Eighty five percent of all recipients surveyed in a report by the National Automated Clearing House Association (NACHA) on Corporate EDI said they prefer the data to flow with the dollars.^{3/} All payment information necessary for the vendor is contained in the addenda records attached to the payment and automatically sent to each bank. In some cases banks pass remittance data directly to a customer's accounts receivable system. If payment and payment information are split and payment information does not flow through the bank, reconciliation, that is, manual matching of a payment and corresponding payment information, becomes more cumbersome for the vendor.

Furthermore, to the extent banks become capable of handling remittance data, the government saves money. If banks are not poised to play a major role in the passage of remittance data, Treasury and Federal agencies are likely to devote substantial resources to solving the problem either through a central system or at the agency level or both. These costs will substantially mitigate cost savings expected from converting payments from checks to EFT.

Anecdotal evidence, however, suggests that banks, despite the volume of EFT payments anticipated due to the legislation, have not yet made a business case for investing in the software (or in low cost translation service providers) required to pass on the payment information.

Treasury is currently conducting research on the banking industry and their role in Federal and corporate EFT payments, particularly with respect to passing on remittance data. The results of this study will be available in early summer. In the meantime, and if it is determined that the banks won't be a player in resolving the remittance data problem at a reasonable cost, alternative methods of passing along remittance data to vendors must be pursued.

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There is an initiative currently underway which may bring banks closer to resolving the nonreceipt of remittance data. NACHA, the national trade association which establishes the rules, standards, and procedures for ACH payments, has formed a rules workgroup to consider a rule change requiring financial institutions to make remittance data available to their customers. The rule, if passed, may take a year or two to implement.

CURRENT REGULATORY FRAMEWORK

The existing Treasury regulation that governs the Federal government's use of the ACH, 31 CFR Part 210, does not address this issue. Part 210 is currently being revised and it is FMS' intention to raise this issue in the rulemaking.

In addition, the Federal Acquisition Regulation (FAR) has no current language which ensures that contractors get information required about a payment. However, as a result of the legislation, the FAR is proposing language in its mandatory EFT contract clause which will require agencies to provide remittance data to vendors as part of the contractual terms. The language, if adopted, will appear in the FAR Final Rule on Mandatory EFT scheduled for final publication in the later part of calendar year 1997.

ALTERNATIVES

The following alternatives were considered:

1. *Regulate financial institutions.* Mandating that financial institutions pass on remittance data is not a viable alternative. Treasury and other disbursing agencies must first exhaust attempts to resolve the problem by 1) determining the role of financial institutions in passing on the data, 2) determining the role of the Federal government in making remittance data available to vendors whether or not banks will play a major role, and 3) developing or enhancing payment systems in which remittance data is not an issue (e.g., preauthorized debit for payments). Forcing banks to assume this role unfairly shifts the burden from the federal government to the private sector. Furthermore, if banks were required to pass on remittance data without regard to cost, what would likely result is that banks would pass on the cost of compliance to their customers receiving EFT payments. Vendors, in turn, may pass the cost on to the government or, if unable to do that, may decide not to continue providing goods or services to the government.
2. *Pursue a strategy of continuous dialogue with the banking industry to develop solutions coupled with Treasury-led research and development of alternative solutions.* FMS recommends this alternative. (See discussion below)

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RECOMMENDATION

FMS recommends a policy of aggressive dialogue and cooperation with the banking industry to, with the Treasury, jointly pursue low cost solutions. In addition, Treasury should, on its own, focus on research and development of short term and long term government solutions.

JUSTIFICATION

As discussed above, the banking industry is in the best position to deliver payment and payment information. Solutions must be pursued which result in little or no cost to the government and banks, and a reasonable cost to the vendor.

There are various alternative methods available for passing on remittance data including the use of credit cards and the use of vendor initiated preauthorized debit payments currently being piloted. In both cases the vendor initiates the payment and already has “matched” a receivable with the payment request. Other possible solutions include outsourcing some payments to a third party which could pass on the remittance data and sending remittance data through a Value Added Network (VAN).

In addition, agencies are experimenting with other means for transmitting remittances. For instance, the Department of Energy (DOE) will soon start using the Internet to send email messages containing information about a payment. The Internet is a relatively low-cost method available to all agencies and many vendors. The Social Security Administration (SSA) is implementing a voice response system so that vendors may call SSA and receive recorded information about a payment. Other agencies are automatically mailing remittance data to their vendors. (See attached for other methods available to agencies)

In summary, unless and until the banking industry is able to pass on remittance data to its customers at a low cost to the vendor, the burden of providing the information must fall on the government to ensure that vendor payments are converted to EFT in compliance with the legislation in such a way as to avoid a hardship on the Federal government’s vendors.

TREASURY IMPLICATIONS

- Aggressive marketing and outreach efforts to financial institutions to provide low cost electronic means of remittance data passage must continue.
- Treasury needs to determine the most cost-effective, short term and long-term solution for providing vendors with remittance data in human readable form including determining the use of systems and the role of banks and the Federal government.

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AGENCY IMPLICATIONS

- Agencies may require more resources if required to make remittance data available to vendors due to increased EFT payments.
- Agencies may need to develop new systems, operational procedures, and internal policies in order to make remittance data available to their vendors.
- Agencies will need to work with vendors to convert their payments to EFT and ensure vendors know the procedures for obtaining remittance data from the agency.

BASIS FOR RESEARCH

FMS has met with many agencies since enactment of the legislation to gather information and discuss issues relating to obstacles to conversion. FMS conducted over a dozen round-tables throughout the country with over 1100 total participants. FMS also held focus groups with agencies on major payment types including vendor payments. Remittance data was always one of the most widely discussed topics related to vendor payments.

In addition, FMS formed the Interagency EFT Policy Workgroup, the goal of which was to obtain agency input on key issues to be considered in formulating Treasury's final rule on mandatory EFT. As part of this workgroup, a subgroup focusing on vendor payments was formed, consisting of approximately 35 agencies including the Department of Agriculture (USDA), Department of Defense (DOD), General Services Administration (GSA), Veterans Administration (VA), and many others. The subgroup met every two weeks over a five month period. The vendor payment subgroup identified remittance data as the top obstacle in converting vendor check payments to EFT.

Of the 24 CFO Act agencies which have submitted implementation plans to Treasury, the vast majority listed the non-passage of remittance data as the number one obstacle to converting vendor payments to EFT.

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NOTES

^{1/} In addition, as an enhancement to the ACH payment program, the Financial Management Service (FMS) has obtained the capability of receiving from agencies and translating into the ACH CTX format, a financial Electronic Data Interchange (EDI) payment instruction using a standard EDI transaction set known as the 820 Payment Order/Remittance Advice. FMS currently makes approximately 4,000 CTX payments per month at a value of \$170 million on behalf of three Federal agencies. This volume represents a small fraction of total Federal ACH payments.

^{2/} Source: NACHA Corporate Financial EDI Study, published January 1995.

^{3/} Source: NACHA Corporate Financial EDI Study, published January 1995.

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ATTACHMENT

AGENCY ALTERNATIVES FOR MAKING REMITTANCE DATA AVAILABLE TO VENDORS

January 9, 1996

Overview

The Interagency Vendor Policy Subgroup identified the transmittal of remittance data as the single greatest impediment to implementing the EFT provisions of the Debt Collection Improvement Act of 1996. At this point in time, financial institutions (FIs) are not required to pass on remittance data. As a result, Federal agencies can expect an increase in the number of phone calls from vendors as the number of EFT payments increase. To forestall the increase in the number of phone calls to agencies, the vendor subgroup discussed the following means for making remittance data available to vendors:

Internet: The Internet allows for at least two cost effective ways of providing remittance data to vendors (or to an employee for travel reimbursements).

1. Vendor File: Make a vendor payments file with payment history and remittances advices available to vendors.
2. Email: Send remittance advices to vendors via email as payments are disbursed.

There are additional labor and systems costs associated with sending emails or maintaining a vendor file, but overall the Internet is a cost effective means for dealing with remittance data.

Voice Response System: Requires a touch tone phone for the vendor to inquire about a payment. Vendors have to pay long distance telephone charges unless the agency sets up 800 numbers. The costs associated with setting up and maintaining such a system need to be identified and carefully considered.

Auto Fax: A mass faxing system that can be set up in-house by an agency or doled out to a contractor. The cost is relatively high and can rival the cost of using the postal system.

Fax on Demand: A voice response system which allows vendors to request fax copies of remittance advices. To use the system a vendor must have a touch tone phone. Remittance data is made available by either downloading remittance information immediately (if calling from a fax machine) or providing a fax number to which the remittance information is faxed at a later date.

Fax: When a Federal payment is disbursed, print and fax the remittance data to the vendor. The cost of faxing the remittance will vary but can exceed the cost of mailing the remittance.

Postal System: Print and mail remittance advices. There are additional labor costs associated with this option. In addition, the postage cost brings the total cost associated with the EFT payment above the cost associated with issuing a check.

FMS as a Bulk Mailer: Have FMS mail remittance data to vendors. One of the advantages of this option for agencies is the bulk mail discount given to FMS.